CONSTRUCTIVE GRAND LARCENY. — Where property stolen consists of separate articles or has different owners, and where the act of asportation is separable, the question will often arise, when must the prosecution proceed for several larcenies, and when may it indict for a single larceny. The issue becomes of practical importance when the several thefts are merely petty larcenies but the total theft would constitute grand larceny. Such was the fact in two recent cases which illustrate both branches of the general problem. In one, several sheep of different owners were stolen at the same time. This theft was held by the Wyoming court to constitute a single offence of grand larceny. *Ackerman* v. *State*, 54 Pac. Rep. 288 (Wyo.). In the other case, the prosecutor, a mining company, had missed from its reduction works, at various times, small quantities of cyanide product. The defendant was later found with thirty pounds in his possession. The jury convicted him, upon an indictment, for grand larceny. Upon exceptions, the Nevada court sustained the verdict, taking the ground that where there is a continuing transaction several distinct asportations do not constitute different offences, and the defendant may be convicted upon the final asportation. *State* v. *Mandich*, 54 Pac. Rep. 516 (Nev.).

The fact that property stolen is of several articles or in separate owners is immaterial, and the decision to that effect by the Wyoming court is unexceptionable. Courts have held otherwise, but, it seems, from mistaken views. *U. S.* v. *Beerman*, 5 Cranch C. C. 412. It is the entire offence against the State which the criminal law considers, without regard to the circumstance that various civil actions may arise from the same transaction. *Wilson* v. *State*, 45 Tex. 76. This is none the less true, although in theory a separate indictment might be found for each item. *Reg.* v. *Brettel*, C. & M. 609. But as a matter of policy, it is generally agreed that the prosecution should bring the whole affair before the court once for all, and that the one time shall be jeopardy of the whole. *State* v. *Ingles*, 2 Hayward, 4. It follows that any severalty in the property should be disregarded, and that the single test of the entirety of the offence should be the entirety of the act of asportation.

Thus a single act of asportation seems to be recognized as the one requisite of a proper indictment for a single larceny, but the Nevada case cannot be supported without taking the further step of saying that several distinct takings may become a single act by construction. The courts indeed have never been over-precise in determining what will be considered a single transaction. So the leading English case holds that where the thief returned to steal in two minutes after the first theft, it was one "continuing transaction," but where he returned in half an hour the offences were separate. *Reg.* v. *Birdseye*, 4 C. & P. 386. This concession has been carried to extremes in America. *State* v. *Martin*, 82 N. C. 672. If the present Nevada case represent the law, whenever a thief accumulates the spoils of his petty larcenies, it will be possible to consolidate the offences under a single charge of grand larceny. *Scarver* v. *State*, 53 Miss. 407. But is not this theory of a continuing transaction indefensible whenever there is in fact more than a single asportation? If before the last taking there was a time when a complete larceny had been committed, it seems impossible to add this to another larceny and find entirety in the whole criminal transaction. If in the present Nevada case the defendant had accumulated the cyanide with no intent to take possession, and then had taken it away at one time, such a spe-

cial case might be larceny; but in the absence of evidence it should not be presumed that such was the case. At all events, the courts should resist the pressure put upon them by the prosecution to recognize in any form this fiction of constructive grand larceny.

THE CASE OF THE KANSAS CITY LIVE STOCK EXCHANGE. — The decision of the Trans-Missouri Freight Case, that the Anti-Trust Act of 1890 forbade all combinations in restraint of trade, however reasonable, is chiefly limited by the fact that the act can apply only to combinations over which Congress has jurisdiction, and cannot affect the workings of traffic within a State as opposed to interstate commerce. This limitation was considered by the Federal Supreme Court in *Hopkins* v. *United States*, Advance Sheets, No. 210, October Term, 1898. The combination complained of was the Kansas City Live Stock Exchange, an association of commission merchants interested in the Kansas City stockyards. Their business consisted in selling on commission the live stock which was sent to the stockyards from many markets and many States. Rules were drawn up for the association; one of them prescribed the rates to be charged, another forbade the members to have any dealings with persons who did not conform to the rules. The Circuit Court thought that this association came within the act, and granted an injunction against it; the Supreme Court, however, takes the opposite view, and the injunction is dissolved.

In holding that the association was not engaged in interstate commerce the court is consistent with former decisions. *Emert* v. *Missouri*, 156 U. S. 296. It is an adequate reason that if the shipper himself for whom the commission merchant acted had come within the State and there sold his cattle, his act in itself could not have been one of interstate commerce. There is no necessity of invoking the other explanation suggested by the court, that even if the sale itself were an act of interstate commerce, the act of the agent in negotiating it might not be included in the category. The further reasoning of the court, however, has wider scope than seems entirely sound. In support of the decision cases are cited in which State statutes were held not to interfere with the commerce clause; it is assumed that in all of them the point decided was merely that the business affected was not interstate commerce. If this assumption is correct, it necessarily follows that the same kinds of business are beyond the control of the Anti-Trust Act, or of any federal statute. Yet some of these cases belong to the class where State statutes are supported in spite of the fact that they regulate commerce between States, where the regulation is not of a kind demanding uniformity and the States are allowed to exercise concurrent control until Congress shall act. *Sherlock* v. *Alling*, 93 U. S. 103. States may pass rules for pilots, and regulate charges for wharfage; they may fix a standard of fitness for engineers of locomotives crossing their territory, and require licenses to be taken out; but in these matters the United States confessedly might also act and supersede the State statutes. *Cooley* v. *Board of Wardens of Philadelphia*, 12 Howard, 299; *Packet Co.* v. *Catlettsburg*, 105 U. S. 559; *Nashville, etc., Ry. Co.* v. *Alabama*, 128 U. S. 96. And if wharfingers or pilots should combine as to rates, or engineers as to terms of service, these combinations would concern interstate commerce even though they might be subject to State legislation; they would then come under the Anti-Trust Act, and, however reasonable, they would be doomed.